

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL ACTION NO. 1:18-cv-63-HSO-JCG

KING MAY

DEFENDANT

COMPLAINT

Plaintiff United States of America, by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorneys for said District, on behalf of its agency, the United States Social Security Administration, alleges the following in support of its Complaint against King May:

I. Parties and Nature of Action

1. This is a civil action brought by Plaintiff United States to collect Social Security Administration Disability benefit overpayments from Defendant King May.

II. Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Southern District of Mississippi under 28 U.S.C. § 1391 because May resides within the Southern District of Mississippi.

III. Facts

4. From April 2007 through July 2008, April 2009 through May 2010, August 2011 through November 2011, and January 2012 through December 2013, May was paid \$54,539.60 in

Social Security Disability benefits.

5. May was not eligible to receive Social Security Disability benefits during the months identified in paragraph 4 of the Complaint because May worked or was engaged in “substantial gainful activity” during that time. 42 U.S.C. § 423(e); 20 C.F.R. § 404.316(b).

6. Accordingly, the \$54,539.60 in Social Security Disability benefits May received in April 2007 through December 2013 constitute overpayments of \$54,539.60 from Social Security to May.

7. The Social Security Act “require[s] such overpaid person or his estate to refund the amount in excess of the correct amount” 42 U.S.C. § 404(a)(1)(A).

8. May has paid \$12,139.50 towards this overpayment. However, he currently owes an outstanding balance of \$42,400.10 to Social Security for the overpayments he received in April 2007 through December 2013. See Ex. A (Certificate of Indebtedness).

9. Social Security sent multiple letters to May demanding that he pay his debt for the outstanding overpayments. To date, May has not repaid his debt to Social Security.

Prayer for Relief

The United States respectfully requests that the Court enter judgment in its favor, as follows:

- a. Entry of judgment against May and in favor of the United States in the amount of \$42,400.10;
- b. Post-judgment interest at the rate prescribed by 28 U.S.C. §1961;
- c. That May is liable for collection costs, including reasonable attorney’s fees and litigation costs, including filing fee costs in the amount of \$400 (\$350 filing fee plus \$50.00 administrative fee) in favor of the United States pursuant to 28 U.S.C. § 2412(a)(2); and

d. Such other and further relief in favor of the United States that the Court deems just and proper.

DATED this the 23rd day of February, 2018.

Respectfully submitted,

D. MICHAEL HURST, JR.
United States Attorney

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CIVIL COVER SHEET

1:18-cv-63-HSO-JCG

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kristi H. Johnson, AUSA, Marc A. Perez, AUSA
501 East Court Street, Suite 4.430
Jackson, MS 39201 (601) 965-4480

DEFENDANTS

KING MAY

County of Residence of First Listed Defendant HARRISON
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 404(a)(1)(A)

Brief description of cause:

RECOVERY OF SOCIAL SECURITY DISABILITY BENEFITS OVERPAYMENT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
42,400.10

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

02/23/2018

SIGNATURE OF ATTORNEY OF RECORD

KRISTI H. JOHNSON, AUSA; MARC A. PEREZ, AUSA

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

Social Security Administration
Office of Central Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241

CERTIFICATE OF INDEBTEDNESS

Claim No. XXX-XX-7458
King E. May JR
11311 Creel Circle
Gulfport MS 39503

Total debt due United States as of February 2018: \$42,400.10

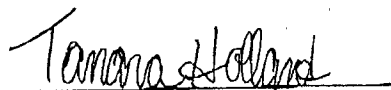
I certify that the Social Security Administration's records show that the above-named debtor is indebted to the United States the amount stated above.

Section 223(f)(1)(B) of the Social Security Act states that an individual may be determined not to be entitled to disability benefits on the basis of a finding that the individual is able to engage in substantial gainful activity. Section 216(i) of the Act provides, generally, that Social Security disability benefits shall not be payable to a claimant for any months in which the claimant performs substantial gainful activity.

Section 223(a)(1)(E) of the Act states that the termination month shall be the third month following the earliest month in which an individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he or she engages or is determined able to engage in substantial gainful activity.

From April 2007 through July 2008, April 2009 through May 2010, August 2011 through November 2011, and January 2012 through December 2013, the wage earner engaged in substantial gainful activity and was, therefore, not due any benefit payments. He was paid benefits totaling \$54,539.60 and paid \$12,139.50 towards the overpayment. Under Section 204(a) of the Social Security Act, the debtor has an unsatisfied indebtedness of \$42,400.10

CERTIFICATION: Pursuant to 28 USC § 1746, I certify under penalty of perjury that the foregoing is true and correct.



Tamara Holland for Anita Sherrod
Associate Commissioner for the Office of
Central Operations

Date: February 22, 2018